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DAVID DASS ASEERPATHAM

v.

LIM GUAN ENG & ANOR

B

HIGH COURT MALAYA, KUALA LUMPUR
ROSNAINI SAUB J
[CIVIL SUIT NO: 22NCVC-521-09-2013]
27 SEPTEMBER 2013

C ***UNINCORPORATED ASSOCIATIONS:*** *Societies - Political party - Dispute as to election of members of Central Executive Committee - Directive by Registrar of Societies for re-election - Political party interpreted party's constitution and decided that directive complied with - Whether decision of political party could be questioned by court - Societies* D *Act 1966, s. 18C*

The second defendant was a political party known as Parti Tindakan Demokratik ('DAP') and the first defendant was the Secretary General of DAP. The plaintiff was a member of DAP. On 15 December 2012, the second defendant held its National E Party Congress where, *inter alia*, 20 members of its Central Executive Committee ('CEC') were elected into office. Several members complained to the Registrar of Societies ('RoS') alleging irregularities in the process of electing the CEC members. *Vide* F letter dated 17 April 2013, the RoS issued a notice under s. 16(1) of the Societies Act 1966 ('the Act') to the defendants after he came to an opinion that a dispute had occurred among the party members and he was not satisfied as to the identity of the persons properly elected to the CEC. Although the first defendant had given his explanation, the RoS was not satisfied and G with that, directed that a re-election of the CEC members to be conducted in accordance with the provisions of the party's Constitution. In compliance with the RoS's letter dated 30 July 2013, the first defendant issued a notice informing that a Special Party Congress would be held on 29 September 2013 for the H purpose of re-electing the CEC members. The plaintiff, however, instituted an action against the defendants and sought, *inter alia*, declarations that the election of the CEC members could only be done through the Party National Congress and not by a Party Special Congress. The defendants, on the other hand, filed an I application *vide* encl. 9 to strike out the plaintiff's action under O. 18 r. 19(1) of the Rules of Court 2012. To support their

contention, the defendants argued that (i) the plaintiff's case was unsustainable as it was in contravention of s. 18C of the Act; and (ii) the calling of the Party Special Congress was made pursuant to Standing Order 46 of the First Schedule to the party's Constitution and was in compliance with the RoS's directive contained in the letter dated 30 July 2013.

Held (allowing encl. 9):

(1) According to the Federal Court in *Pendaftar Pertubuhan v. Datuk Justine Jinggut*, the power given to the RoS under s. 16(1) of the Act is to direct a society to settle its dispute but there is no power to determine if any disputed meeting that was held was valid or not. The RoS need not make such a finding. He merely comes to an opinion of the existence of dispute. The Federal Court ruled that the role of the RoS is one of non-interference in a dispute in a political party. Section 16(1) of the Act therefore has to be given a narrow interpretation limiting the scope of the duty of the RoS to that of only giving opinion to the existence of a dispute and directing the society to settle the dispute by serving a notice on it. In the event of a non-compliance of that notice, s. 16(2) stipulates that the RoS may de-register the society under s. 13(1)(c)(ix) of the Act. (para 9)

(2) The RoS directed the defendants to re-elect the CEC members in accordance with the provisions of the party's Constitution. The parties herein were not challenging the RoS's directive. In fact, the parties, including the defendants, had accepted the said directive to re-elect the CEC members in order to settle the dispute pertaining to the original election of the CEC members at the Party National Congress that was held on 15 December 2012. This meant that the RoS had yet to exercise his discretion under s. 16(2) of the Act to take steps to cancel the registration of the party, *ie*, the second defendant. The defendants still had the opportunity to put their house in order. (para 10)

(3) The defendants chose to utilise and interpret Standing Order 46 for the purpose of complying with the RoS's directive. This was a decision made by the defendants in respect of the affairs of the party and this court was not seized with the jurisdiction to entertain questions arising therefrom. Further, the defendants had also decided to interpret and construe Standing Order 46 in the manner that they did. (para 12)

(4) The plaintiff's case was caught by the provision of s. 18C of the Act and thus, did not have a sustainable case. Parliament in its wisdom has enacted s. 18C in such very clear words in that the court shall have no jurisdiction to interfere in the decision of a political party on any matter relating to its affairs. Further, it was for the RoS himself to decide under s. 16(2) of the Act as to whether or not he was satisfied that his directive had been complied with. It is not for the court to speculate or to decide what the RoS's decision would or should be. (paras 14 & 15)

Case(s) referred to:
Pendaftar Pertubuhan v. Datuk Justine Jinggut [2013] 2 CLJ 362 FC ***(refd)***
Pendaftar Pertubuhan Malaysia v. PV Das; Datuk M Kayveas (Intervener) [2003] 3 CLJ 404 CA ***(refd)***

Legislation referred to:
Rules of Court 2012, O. 18 r. 19(1), O. 29
Societies Act 1966, ss. 13(1)(c)(ix), 16(1), (2), 18C

For the plaintiff - Harikrishnan (Mahendra with him); M/s M Mahendra & Co
For the defendants - Karpal Singh (Gobind Singh Deo, Sangeet Kaur, Sivanesan & Kulasegaran with him); M/s Karpal Singh & Co

Reported by Kumitha Abd Majid

JUDGMENT

Rosnaini Saub J:

[1] The second defendant is a political party known as Parti Tindakan Demokratik or the Democratic Action Party, widely known as DAP. The first defendant is the Secretary General of DAP. The plaintiff was/is a member of DAP. On 15 December 2012, the second defendant held its National Party Congress where, *inter alia*, 20 members of its Central Executive Committee ('CEC') were elected into office. Several dissatisfied members complained to the Registrar of Societies ('RoS') alleging irregularities in the process of electing of the CEC members. The RoS *vide* a letter dated 17 April 2013 issued a notice under s. 16(1) of the Societies Act 1966 (Act 335) to the defendants after he came to an opinion that a dispute has occurred among the party members and he was not satisfied as to the identity of

the persons properly elected to the CEC. The RoS *vide* the said letter directed the defendants to provide evidence of the settlement of the dispute within one month. Then by another letter dated 30 July 2013 the RoS informed the first defendant that he was not satisfied with the explanation given by the first defendant and directed that a re-election of the CEC members be conducted in accordance to the provisions of the party's constitution. In purported compliance with the RoS's letter dated 30 July 2013, the first defendant issued a notice dated 4 September 2013 to all party delegates and branches' secretary informing them that a Special Party Congress will be held on 29 September 2013 for the purpose of re-electing the CEC members. The plaintiff was served with a copy of the said notice.

[2] By this writ action against the defendants, the plaintiff is seeking several remedies or reliefs including, *inter alia*, declarations that the election of CEC members can only be done through the Party National Congress and not the Party Special Congress. Further, the plaintiff seeks to declare the first defendant's notice dated 4 September 2013 as null and void.

[3] Now there are two applications before the court. The first is an application in encl. 4 by the plaintiff under O. 29 of the Rules of Court 2012 (ROC 2012) for an interim injunction to restrain the defendants from holding the Party Special Congress on 29 September 2013 pending the disposal of this suit. The second is an application in encl. 9 by the defendants pursuant to O. 18 r. 19(1) of the ROC 2012 to strike out the plaintiff's action. Both these applications have been heard together and the affidavits filed by the parties in respect of both applications have been referred to and considered by the court in dealing with these applications. I need to mention that the documentary evidence is exhibited in encl. 5, that is, the plaintiff's affidavit in support of the interim injunction application.

[4] I have given due consideration to the submission of counsel for both parties, including the case authorities cited. I shall first deal with the defendants' application to strike out the plaintiff's action, that is, encl. 9.

[5] The defendants' main ground for supporting the application to strike out is that the plaintiff's case is unsustainable as the same was in contravention of s. 18C of the Societies Act 1966 ('the said Act'). The defendants' counsel relied on the Federal Court

A case of *Pendaftar Pertubuhan v. Datuk Justine Jinggut* [2013] 2 CLJ 362; [2013] 3 MLJ 16, a case involving the Sarawak National Party (SNAP) where the political party was deregistered after the RoS was not satisfied with the explanation given to the notice issued under s. 16(1) of the said Act. Another case referred to is
B the case of *Pendaftar Pertubuhan Malaysia v. PV Das; Datuk M Kayveas (Intervener)* [2003] 3 CLJ 404. In essence, the defendants are saying that the dispute between the two parties is a dispute between members of a political society and based on s. 18C of the said Act and the authorities cited, the court has no jurisdiction
C to decide on the merits of the dispute. It is the defendants' case that the calling of the Party Special Congress was made pursuant to standing order 46 of the First Schedule to the party's Constitution and is in compliance with the RoS's directive contained in the letter dated 30 July 2013.

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[6] The plaintiff on the other hand is arguing that s. 18C of the said Act does not apply to the present case as the plaintiff is not challenging any decision made by the defendants. It is argued that the plaintiff in his pleading merely refers to non-compliance by the
E defendants to hold the re-election of the CEC members in accordance with the party's Constitution as directed by the RoS. The plaintiff's counsel argued that unlike the case of *Datuk Justine Jinggut* (*supra*), the plaintiff in this present case is not asking the court to go into the dispute between the parties and is not
F challenging the directive given by the RoS. The plaintiff averred that he is merely seeking to enforce his right under the party's Constitution as a party member of the second defendant. The plaintiff took the view that the re-election of the CEC members must be made through the Party National Congress and not the
G Party Special Congress. This is a re-election and not an election of new CEC members and therefore standing order 46 of the First Schedule to the party's Constitution is not applicable. The defendants are required to give a ten weeks' notice for a Party National Congress instead of the seven days' notice for the Party
H Special Congress. In short the plaintiff is saying that the calling of the Party Special Congress for the re-election of CEC members is in contravention of the RoS's directive and that the party is in danger of being taken actions by the RoS, including a possible deregistration.

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[7] Now, s. 18C of the said Act is specifically applicable to political parties only in which the second defendant is one. It provides as follows:

> 18C. The decision of a political party or any person authorised by it or its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.

It seems to me that these are crystal clear words to show the intention of the legislator to oust the jurisdiction of the court in questioning any decision made by a political party regarding the interpretation of its constitution, rules, regulations or on any matter relating to the affairs of the party. In *PV Das; Datuk M Kayveas (Intervener)* (*supra*), the plaintiff sought to, *inter alia*, quash the RoS's recognition of Datuk M Kayveas as President and his supporters as office-bearers of the People's Progressive Party (PPP) and instead sought recognition that he and his supporters are the legitimate President and office bearers respectively. Abdul Hamid Mohamad JCA (as he was then) in delivering the judgment of the Court of Appeal held that these are decisions made by a political party on matter relating to the affairs of the party and as such the court has no jurisdiction to entertain them based on the provision of s. 18C of the said Act. Note that the case was filed by the plaintiff against the RoS but still the Court of Appeal decided not to entertain the claim because that would indirectly be challenging the political party's decision in electing its President and office bearers. The decision of *PV Das; Datuk M Kayveas (Intervener)* (*supra*) in respect of the scope of s. 18C of the said Act was restated by the Federal Court in *Datuk Justine Jinggut* (*supra*).

[8] I shall now consider the provision of s. 18C of the said Act in the light of the factual background and circumstances of our present case. I have read the plaintiff's statement of claim and I think the plaintiff's case is clearly related to the calling of the Party Special Congress by the first defendant for the purpose of re-electing the CEC members. It is not in dispute that the first defendant as Secretary General is empowered to issue the notice

for a Party Special Congress. What is in dispute is whether or not the calling of such Special Congress is in compliance with the RoS's directive as contained in his letter dated 30 July 2013 (exh. DD-4 of the plaintiff's affidavit in encl. 5). The contents of that RoS's letter addressed to the first defendant are as follows:

> MAKLUMBALAS NOTIS SEKSYEN 16(1) AKTA PERTUBUHAN 1966
>
> Sukacita saya merujuk kepada perkara diatas.
>
> 2. Lanjutan daripada maklumbalas yang dikemukakan serta siasatan yang dijalankan dan setelah menelitinya, Pendaftar Pertubuhan tidak berpuashati dengan penjelasan yang diberikan. Saya dengan ini memaklumkan bahawa Pendaftar Pertubuhan telah memutuskan Parti Tindakan Demokratik (DAP) membuat pemilihan semula CEC parti. Pemilihan ini perlulah dikendalikan oleh Ahli Jawatankuasa tahun 2008-2010 dan hendaklah dilaksanakan mengikut peraturan-peraturan yang ditetapkan di dalam perlembagaan parti.
>
> Sekian. Terima kasih.
>
> sgd
>
> (Dasmond Das Michael Das)
> B.P Pendaftar Pertubuhan Malaysia

It is obvious from this letter that the RoS was not satisfied with the explanation given by the defendants in respect of an earlier notice dated 17 July 2013 issued by the RoS under s. 16(1) of the said Act (ie, exh. DD-3 of the plaintiff's affidavit in encl. 5) and he has directed that the CEC members be re-elected in accordance to the provisions of the party's Constitution.

[9] I pause here for a moment to briefly state the duties and powers of the RoS under s. 16(1) of the said Act. According to the Federal Court in *Datuk Justine Jinggut* (*supra*), the power given to the RoS under s. 16(1) of the said Act is to direct a society to settle its dispute but there is no power to determine if any disputed meeting that was held is valid or not. The RoS need not make such a finding. He merely comes to an opinion of the existence of dispute. The Federal Court ruled that the role of the RoS is one of non-interference in a dispute in a political party. Section 16(1) therefore has to be given a narrow interpretation limiting the scope of the duty of the RoS to that of only giving

opinion to the existence of a dispute and directing the society to settle the dispute by serving a notice on it. And in the event of a non-compliance of that notice, s. 16(2) stipulates that the RoS may deregister the society under s. 13(1)(c)(ix) of the said Act.

[10] However, in our present case, the RoS apparently issued a follow-up letter dated 30 July 2013 that the contents of which I have reproduced above, ie, directing the defendants to re-elect the CEC members in accordance with the provisions of the party's Constitution. The parties herein are not challenging the RoS's directive. In fact the parties, including the defendants seem to have accepted the said directive of the RoS to re-elect the CEC members in order to settle the dispute pertaining to the original election of the CEC members at the Party National Congress that was held on 15 December 2012. This means the RoS has yet to exercise his discretion under s. 16(2) to take steps to cancel the registration of the party, ie, the second defendant. The defendants still have the opportunity to put their house in order, so to speak.

[11] Now coming back to the issue at hand. The plaintiff says that the calling for the Party Special Congress to be held on 29 September 2013 is not in compliance with the RoS's directive because a re-election of CEC members should be held through a Party National Congress. The defendants on the other hand contended otherwise and rely on standing order 46 of the First Schedule to the party's Constitution. Standing Order 46 states as follows:

> 46. In the case of a Party Special Congress called for the purpose of electing a new Central Executive Committee (CEC), standing order 43, 44 and 45 shall apply *mutatis mutandis*.

It is obvious that the defendants chose to utilise and interpret standing order 46 for the purpose of complying with the RoS's directive. The defendants' stand is that standing order 46 is for the specific purpose of re-electing the CEC and is applicable to a situation such as in the present case. In other words, as far as the defendants are concerned, they are acting in compliance with the RoS's directive.

[12] In my opinion this is a decision made by the defendants in respect of the affairs of the party and this court therefore is not seized with jurisdiction to entertain question arising therefrom. Further, the defendants have also decided to interpret and

construe the standing order 46 in the manner that they did. Section 18C of the said Act clearly stipulates that the decision of a political party in the interpretation of its constitution cannot be called in question in any court. In essence, what the plaintiff is asking the court to do in the present case is to review and question the decision of the defendants in the following matters:

(a) in their interpretation of the standing order 46 of the First Schedule to the party's Constitution; and

(b) to call for a Party Special Congress instead of the Party National Congress to re-elect the CEC as directed by the RoS.

I think these are matters that the court is not allowed to do pursuant to the provision of s. 18C of the said Act.

[13] The word 'decision' is not defined but in my opinion any act or omission on part of the political party in respect of any matter relating to its affair must surely resulted from a decision having been made. In other words, I am of the view the word 'decision' as appearing in s. 18C of the said Act should be given a wide and liberal meaning.

[14] It may then be argued that the second defendant may be in danger of being deregistered if the RoS finds that the re-election of CEC members by way of a Party Special Congress is not in compliance of his directive. The answer to that argument is that it is for the RoS himself to decide under s. 16(2) of the said Act whether or not he is satisfied that his directive has been complied with. It is not for the court to speculate or to decide what the RoS's decision would be or should be - see again the case of *Datuk Justine Jinggut* (*supra*).

[15] It seems clear to me that the plaintiff's case is caught by the provision of s. 18C of the said Act, and although I can understand the predicament faced by the plaintiff, this court has no choice but to give effect to the law as it stands. Parliament in its wisdom has enacted s. 18C of the said Act in such very clear words in that the court shall have no jurisdiction to interfere in the decision of a political party on any matter relating to its affairs. I therefore agree with the defendants' counsel that the plaintiff does not have a sustainable case.

[16] In the premises and based on the reasons stated I hereby allow the defendants' application in encl. 9 and order that the plaintiff's suit be struck out. It follows that the plaintiff's application for interim injunction in encl. 4 no longer has any foundation to stand, and accordingly is hereby also ordered to be struck out. I further order the plaintiff to pay costs of RM5,000 to the defendants.

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